December 16. 1740.

Unto the Right Honourable the Lords of Council and Session.

The PETITION and COMPLAINT of *John Hay* Merchant in *Edinburgh*,

Humbly ſheweth,

THAT there happened, in the Year 1734, a Competition concerning the Rents of a Tenement and Stable at the Head of the *Cowgate*, to which *Margaret Home*, Widow of *William Mitchell* Stabler in *Edinburgh*, had Right by Adjudication, and from whom my Right, as well as the Right of *Alexander Cleghorn* of *Fairlyhope*, the other Competitor, were derived.

That I had obtained a Decreet against *Lilias Cuningham*, Relict of the deceas'd *Alexander Polſon* Stabler in *Edinburgh*, as Tenant and Poſſeſſor of the ſaid Tenement; of which ſhe raiſed Suſpenſion, and likewiſe a Multiple-poinding: whereby the ſaid Competition was brought on before your Lordſhips, and ſhe was of courſe found liable in once and ſingle Payment, and intitled to the Expence of the Suſpenſion and Multiple-poinding.

That the Competition laſted for ſome more than a Year before the Earl of *Leven* Ordinary; and it is unneceſſary at preſent to trouble your Lordſhips with the State of the Rights or Competition. I was at firſt preferred, but the Lord Ordinary did afterwards alter his Opinion, and prefer the ſaid *Alexander Cleghorn*, upon the 17th *January* 1735; and thus the Matter reſted; and thereafter the ſaid *Alexander Cleghorn* died, and never extracted any Decreet. But of late *Thomas Cleghorn*, his eldeſt Son, having, in ſome after Queſtions, occaſion for an Extract of the ſaid Decreet, but being unwilling to pay for the Dues of his own Decreet, as he ought to do, he fell upon this Stratagem, to have the Expence of the Extract taken out of the common Fund, in prejudice of me the poſtponed Creditor: His Agent cauſed inrol a Cauſe in the Earl of *Leven*'s Hand-roll, upon the 12th of *December* 1740, *Mrs. Lilias Cuningham contra Cleghorn, per Michael Menzies & John Dickſon*; and then, without allowing the Lord Ordinary to know that the Cauſe had lyen over ſince *January* 1735, or that *Alexander Cleghorn* was dead, but as if there had ſtill been a depending Action, Mr. *Menzies*, *Cleghorn*'s Lawyer, inſiſts in name of Mrs. *Lilias Cuningham*, and craves Allowance of *L.* 32: 8: 8, as the Expence of her Multiple-poinding, beſides the Expence of extracting the Decreet; and the other Lawyer, in name of *Alexander Cleghorn*, alledges he had ſeen the Accompt, and had nothing to object; and the Lord Ordinary *ſuſtained the ſaid Accompt, and fand the Purſuer muſt have Allowance, out of the Sums due by her, of the foreſaid Sum of L.* 32: 8: 8, *and of the Expence of extracting the Decreet, conform to the Collector's Receipt*. And then the Proceſs was given out to extract, and *L.* 5 *Sterling* conſigned, to Account of the Dues thereof, by *David Dickſon* Writer in *Edinburgh*, Agent for Mr. *Cleghorn*.

This Accompt conſiſted of certain ſmall Articles, and *L.* 17, 14 *s.* as a Conſultation to a Lawyer for appearing for the ſaid *Lilias Cuningham* in the Multiple-poinding; which Conſultation was never given, as indeed it is not uſual to give Lawyers any Conſultation for ſo overly an Appearance: But then it is humbly thought, that it is an Abuſe in Agents, to claim Allowance, out of the common Fund of the Creditors Payment, of Conſultations that were never given.

Your

Your Lordſhips will obſerve, that this was an extraordinary Piece of Agentry, calculate mainly to get the Expence of extracting the Decreet, which Mr. *Cleghorn* ſhould himſelf pay, allowed out of the common Debitor's Funds, in prejudice of me the poſtpon'd Creditor, but who am intitled to be paid after *Cleghorn* is paid of his Sum of *L.* 50 *Sterling*, for which he had only a Security upon the ſaid Tenement and Stabling; and therefore it was not a fair Way of inrolling a Cauſe, for him or his Doer to inrol a Cauſe by two Lawyers both employed by himſelf, whereof the one was to aſſume the Name of Mrs. *Lilias Cuningham*, and the other to appear for Mr. *Cleghorn* as the ſole Defender, when what was intended was truly to get Allowance to Mr. *Cleghorn* himſelf of the Expence of extracting this Decreet. In ſuch a Queſtion I was the proper Contradictor, and it was well known to Mr. *Cleghorn* and his Doers who was my Lawyer, and therefore he ought to have been called: But, that neither my Doer nor Lawyer might advert to it, the Cauſe is inrolled in a pompous Stile, *Mrs. Lilias Cuningham againſt Cleghorn*; whereas the poor Woman whoſe Name was thus uſed, was never known by that Stile; for ſhe was the Relict of *Alexander Polſon* Stabler at the time of the Commencement of the ſaid Proceſs in the 1734, and ſhe is now living upon Charity in the Trinity Hoſpital.

The true Fact as to her is thus: She was indeed the Raiſer of the Suſpenſion and Multiple-poinding, and was found intitled to her Expences; but as ſhe had employed no Lawyer, ſhe never inſiſted for theſe Expences, thinking that the claiming of them would have coſt her more than they were worth; and therefore, while the Cauſe was depending, ſhe never gave in any Accompt of the ſmall Expence ſhe had been at, but paid up her Rent to Mr. *Cleghorn*. *It will be proved by her Oath, if denied, that the Accompt now founded on was never given in by her, nor with her Privity or Knowledge; and that ſhe never employed any Lawyer to claim upon the ſame in her Name, and that ſhe did not give the Conſultation ſtated in the ſaid Accompt: So that it is evident that Mr.* Cleghorn *and his Doers have fallen upon this above mentioned poor Shift, to put in his Pocket the ſaid* L. 32 : 8 : 8, *and the Expence of the Decreet, to which he has no manner of Title.*

As the poor Woman had deſerted the Claim of any ſmall Expences ſhe was at, when it could have competently come in, during the Dependence; ſo it is humbly thought, that, after the Cauſe had lyen over for no leſs than five Years, this Claim could not have been revived by a ſummary Inrolment, without a Summons of Wakening and Transference againſt ſaid *Alexander Cleghorn*'s Heirs, and calling all Parties having Intereſt, and formerly in the Field. But as the poor Woman had paid up her Rent, and was long ago out of the Poſſeſſion of ſaid Houſe and Stable, it is humbly thought it was a very great Abuſe in Mr. *Cleghorn* and his Doers, by the artful Piece of Management above mentioned, to endeavour to put into *Cleghorn*'s Pocket the ſaid *L.* 32 : 8 : 8, and the Expence of the Decreet, which he ought to have paid himſelf.

May it therefore pleaſe your Lordſhips, to alter the Lord Ordinary's Interlocutor, which was obtained by Colluſion, as above ſet forth; and to find, That neither the ſaid Accompt of Expences, nor that of extracting the Decreet, can be allowed; and to enquire who has been moſt inſtrumental in promoting the above mentioned undue Piece of Agentry, and to cenſure them as your Lordſhips ſhall think proper, in order to prevent the like Practices in time coming; and, in all Events, to decern Mr. Cleghorn *and his Doers to pay to the Petitioner the Expence of this Application, as your Lordſhips ſhall pleaſe to modify the ſame; and, in the mean time, to ſtop extracting of the ſaid Decreet.*

According to Juſtice, &c.

JO. HAY.

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